IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CENTRAL EXCISE & CUSTOMS GOLD CONTROL AP No 29 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

REFNOL RESINS & CHEMICALS LTD.

Versus

COMMISSIONER OF CENTRAL EXCISE-I

Appearance:

1. CENTRAL EXCISE & CUSTOMS GOLD CONTROL AP No. 29 of 2003
MR PARESH M DAVE for Petitioner No. 1
MR DN PATEL for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA
Date of decision: 19/01/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

In this application, the applicant-assessee has sought for reference of the following questions :-

"(A) Whether Heading No.34.03 of the First Schedule to the Central Excise Tariff Act, 1985 covers two products namely (i) lubricating preparations and (ii) preparations of a kind used for the oil or grease treatment of textile materials, leather, furskins or other materials as held by the Appellate Tribunal; or Heading No.34.03 of the Tariff covers only lubricating preparations which might be of a kind used for the oil or grease treatment of textile materials, leather, furskins or other materials ?

(B) Whether the product in question was only a textile softener or it was a lubricating preparation entitled to the benefit of Notification No.12/94-CE dated 1.3.1994 as amended by Notification No.14/95-CE dated 16.3.1995 ?

(C) Is the Appellate Tribunal right in denying benefit of Notification No. 12/940CE dated 1.3.1994 as amended by Notification No.14/95-CE dated 16.3.1995 to the applicant for the product in question."

2. Heard Mr Paresh M Dave, learned counsel for the applicant-assessee and Mr DN Patel, learned senior standing counsel for the respondent-revenue.

3. Having heard the learned counsel for the parties, we are of the view that the following questions are required to be referred for the opinion of this Court under the provisions of Section 35H of the Central Excise Act, 1944 :-

"(i) Whether Heading No.34.03 of the First Schedule to the Central Excise Tariff Act, 1985 covers two products namely (i) lubricating preparations and (ii) preparations of a kind used for the oil or grease treatment of textile materials, leather, furskins or other materials as held by the Appellate Tribunal; or Heading No.34.03 of the Tariff covers only lubricating preparations which might be of a kind used for the oil or grease

treatment of textile materials, leather, furskins or other materials ?

(ii) Is the Appellate Tribunal right in denying benefit of Notification No. 12/940CE dated 1.3.1994 as amended by Notification No.14/95-CE dated 16.3.1995 to the applicant for the product in question."

Accordingly, the Tribunal is directed to draw statement of case and refer the aforesaid question Nos. (i) and (ii) for the opinion of this Court under Section 35H of the Act.

4. Rule is accordingly made absolute. The application stands disposed of.

(M.S. Shah, J.)

(A.M. Kapadia, J.)

sundar/-